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sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S1 12 Cr. 615 (JPO)

5 AMIR ABBAS TAMIMI,

6 Defendant.

7 -----x

8 November 15, 2013
9 10:15 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: JASON P.W. HALPERIN

18 ANDREA SURRATT

Assistant United States Attorneys

19 THE LAW OFFICES OF SAEID B. AMINI

Attorneys for Defendant

20 BY: SAEID BARADARAN AMINI

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1 (Case called)

2 THE DEPUTY CLERK: Your Honor, this is in the matter
3 of United States of America versus Amir Tamimi.

4 Starting with the government, can I have counsel state
5 their appearance for the record, please?

6 MR. HALPERIN: Good morning, your Honor. Jason
7 Halperin and Andrea Surratt for the government. With us at
8 counsel table is Special Agent David Balint of the FBI, Thomas
9 Smith of the Department of Commerce, and Matthew Fede of the
10 Department of Homeland Security.

11 THE COURT: Good morning.

12 MR. AMINI: Good morning. Saeid Amini for defendant
13 Amir Tamimi.

14 THE COURT: Good morning.

15 Please swear in the interpreter.

16 (Interpreter sworn)

17 THE COURT: We are here today for the imposition of
18 sentencing in this case. Mr. Tamimi pleaded guilty on July
19 10th of this year to one count of conspiring to violate IEPA,
20 the International Economic Emergency Powers Act, which is a
21 class C felony under federal law. This is a second sentencing
22 hearing. We had scheduled sentencing for a couple of weeks ago
23 and since that time there have been additional submissions.

24 Are there any preliminary matters before we proceed
25 with sentencing?

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1 MR. HALPERIN: Not from the government, your Honor.

2 THE COURT: Mr. Amini?

3 MR. AMINI: Your Honor, I apologize.

4 The defendant was thinking about withdrawing the plea
5 and wanted to see if time would be granted before sentencing so
6 we can file a motion. I talked to him this morning. He said
7 my heart is hurting, I want to get over it. So, based on our
8 discussion yesterday I was going to request the Court to give
9 us extra time before sentencing for the motion but this morning
10 he said my heart is hurting, please go ahead, and I'll just put
11 myself in the Court's decisions.

12 THE COURT: When he said his heart is hurting, do you
13 mean, was it -- is that a physical issue or?

14 MR. AMINI: I believe so. He had a heart attack --
15 (Defendant and counsel conferring)

16 MR. AMINI: He had a heart attack -- this is in the
17 filing of the PSR also. He had a heart attack before and he
18 collapsed one time and he was in prison with the other, with
19 the previous attorney. He does have medical problems, yes, and
20 this is in the PSR report and he said my heart is hurting.

21 THE COURT: What does the heart hurting have to do
22 with whether we go forward with sentencing or he moves to
23 withdraw his plea?

24 MR. AMINI: He believes he cannot just go through the
25 trial and not knowing what is going to happen, that's what he

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1 explained to me. But I permanently advised him and I am
2 involved with the case, this is a good case of entrapment,
3 entrapment defense, and I was willing to take it to trial.
4 There was a discussion with the previous attorney on the plea
5 and how a plea is good for cases like this. And I mentioned to
6 him, he said he would rather go with plea despite my advice.
7 Since the last time we were in the Court I spoke with him on
8 the phone a couple times. He agreed for me to request the
9 Court for an extension of the sentence and so I can file the
10 motion. The Court may deny it. I know about Rule 11, I have
11 done it in the past, I know there is a long jump, we have to go
12 to convince the Court, it is not easy, but I wanted to mention
13 to my client that is one other option. And he kind of agreed
14 to it yesterday but today he is just saying he doesn't believe
15 he can take the beating, basically, for the trial and going to
16 trial.

17 I don't know what to do, your Honor. That's what my
18 problem is.

19 THE COURT: Mr. Halperin?

20 MR. HALPERIN: If I may make a suggestion?

21 Number one, the government would strongly oppose such
22 a motion, obviously, and thinks it is entirely baseless. The
23 Second Circuit case law is extremely strong about what an
24 incredibly high standard it is for the defendant to be able to
25 withdraw his plea. Those factors are clearly not existent in

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1 this case.

2 I think clearly what has happened is that as these
3 sentencing hearings and presentencing hearings have progressed
4 and as these submissions have been filed with the Court, the
5 defendant has realized that he may well be getting a sentence
6 much, much higher than the time-served of a year and a day that
7 he has asked the Court for. We have had a chance just to do
8 some very preliminary research but there is a Second Circuit
9 case, I think called Gonzalez, which says just because the
10 defendant has a change of heart about what he might receive at
11 sentencing that is of course no basis to withdraw a plea.

12 What the government would ask, your Honor, is that we
13 go forward with the sentencing today. We really think there is
14 no reason for further delay of the sentencing. And then, one
15 possibility would be we would have no objection if the Court
16 wanted to hold off on filing the actual judgment and giving the
17 defendant a period of two or three weeks so he can take this
18 time and think about this and if he wants to file a motion to
19 withdraw his plea, at that point we will vigorously oppose it
20 and then the Court will rule. And if the Court denies it then
21 the Court can go ahead and enter the judgment.

22 But, we see no reason to further delay today's
23 sentencing. It sounds like the defendant may not want to make
24 the motion based on what his attorney is saying but that's our
25 position, your Honor.

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1 THE COURT: Is it possible to move to withdraw after I
2 have sentenced him here but before I have issued the actual
3 judgment?

4 MS. SURRATT: Your Honor, we haven't had a chance to
5 do extensive research on this. Rule 11.5(e) says that after a
6 Court imposes sentence the defendant may not withdraw a plea of
7 guilty or *nolo contendere* and the plea may be set aside only on
8 direct appeal or collateral attack. The rule itself is not
9 clear as to whether that means the oral imposition of sentence
10 or the entry of judgment.

11 THE COURT: Right.

12 Well, let me just say I'm familiar with the Gonzalez
13 case of the Second Circuit which is 970 F.2d 1095, and it sets
14 forth the standard for withdrawal of a guilty plea under Rule
15 11; A defendant is permitted to withdraw his guilty plea but
16 only before sentencing if he can show a fair and just reason
17 for requesting the withdrawal. And the factors that the Court
18 considers as to whether there is a fair and just reason to
19 justify withdrawal of a plea are or they include, one, the
20 amount of time that has elapsed between the plea and the
21 motion -- here it has been several months since July, four
22 months -- second, whether the defendant has asserted a claim of
23 legal innocence; and third, whether the government would be
24 prejudiced by a withdrawal of the plea. And insofar as the
25 motion to withdraw is based on involuntariness, the defendant

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1 must raise a significant question about the voluntariness of
2 the original plea. A defendant's bald statements that simply
3 contradict what he said in his plea allocution are not
4 sufficient grounds to withdraw the guilty plea.

5 I mean, without revealing attorney-client
6 communications, what would be the ground for withdrawal of the
7 plea?

8 MR. AMINI: Your Honor, it seems like the government
9 is enlarging the scope of the plea. The plea which was offered
10 to my client, the parts therefore were helicopter owned by Red
11 Cross and they enlarged the scope of it and they also actually
12 falsified to FBI and to the Court and this is outside of the
13 plea which we believe they did not stick to their side of the
14 bargain, they extended, the enlarged the scope of the plea in
15 that case.

16 THE COURT: But the elements of the offense are what
17 they are; voluntarily entering into an agreement that violates
18 the statute. And I know there is disputes about the 60-page
19 helicopter part request and the 21 particular items that you
20 say were actually sent by the defendant. Whichever version you
21 accept the guideline calculation is the same, it is 46 to 57
22 months. So, I don't know what turns on that.

23 MR. AMINI: But, your Honor, in the last hearing when
24 Mr. Tamimi said his order was for wires and screws and things
25 like that, the government actually stood up and said he is

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1 lying and he is falsifying to the Court. After they submitted
2 their own submission they actually attached a table which
3 actually verified what Mr. Tamimi said. And then they had
4 nothing to do with the order just looking to make sure the
5 parts are the same so they're enlarging the scope.

6 And, your Honor, for the sentencing we believe, based
7 on all these cases, the Justice Department has published, it
8 makes no difference to the Courts if the item really, what kind
9 of item they are, if they are for nuclear purposes or if they
10 are for very important items or in this case we have the wires
11 and screws. It may not make much difference on the
12 violation -- a violation is a violation -- but if the posted
13 speed sign is 60, I'm going 65, I violate it, but if somebody
14 is going 100 it is also violated. But the sentence and the
15 punishment for somebody's caught driving 100 miles is different
16 from somebody's driving 65 miles.

17 In this case our argument is this is a 62 mile case in
18 a 60 mile zone, not 100 mile, as the government is trying to
19 make -- the government is asking for 57 months, your Honor.
20 That kind of sentence hasn't been given for people that have
21 \$50 million transactions already made.

22 In this case Mr. Tamimi, all he has done is just given
23 the list. We even don't know if those parts actually exist.
24 The individual number one, which the government tells me to
25 refer to the person, I have mentioned in my brief, the

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1 individual no. 1, even we don't know he had the part. If the
2 part does not exist and my client sends just the request, I
3 don't know if the violation really has happened, your Honor.
4 It maybe is my fault, I don't have enough knowledge of it, but
5 if I don't have the part how do you make a request from me?

6 THE COURT: Here is the thing.

7 You talk about 100 miles an hour, 60 miles an hour.
8 The agreement was going above the speed limit. The agreement
9 was as to the elements of the crime. The agreement was -- the
10 disputes that are going on now in the sentencing submissions
11 are all about the attendant circumstances of the crime but they
12 don't change that he pled guilty to the elements of the crime.

13 Do you understand? Do you agree?

14 MR. AMINI: Your Honor, he pled for the attempt of
15 those items --

16 THE COURT: It wasn't attempt, it was conspiracy. It
17 was conspiracy which is different legally.

18 MR. AMINI: But conspiracy in this case, if the -- the
19 co-conspirator, in this case if he does not have the part, is
20 telling me to give a list, I have provided the part. If my
21 co-conspirator actually does not have the part I don't know
22 there is a violation. He pled for it because he wanted to get
23 the case over with. But if this case goes to trial, my
24 argument is if the co-conspirator comes to the trial and
25 testifies I did not even have these files, I was making it up

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1 with the FBI to make a file for you, I'm not sure there
2 actually is a violation because he did not have the part to
3 give.

4 THE COURT: Well, Mr. Halperin, do you want to address
5 that?

6 MR. HALPERIN: Yes, your Honor.

7 Look. I think this whole question makes entirely
8 clear how baseless such a motion would be and now that we have
9 heard what the supposed grounds would be for withdrawing a
10 plea, I want to amend my previous statement. We would oppose
11 even the defendant being allowed to file a motion to withdraw
12 the plea. We think there is actually no grounds.

13 As the Court just noted, in no way, shape or form has
14 the government sought to enlarge the scope of the plea. I'm
15 not even sure what that means.

16 The Court noted that there was specific elements to
17 the offense to which Mr. Tamimi agreed and pled guilty and
18 acknowledged that he had done those things. The plea agreement
19 set forth a very clear guideline range of 46 to 57 months. It
20 allowed a carve-out for defense counsel to argue for that lower
21 offense level. This Court has already ruled that level 26
22 should apply and that the guideline range is 46 to 57 months.
23 He has already agreed to waive an appeal of any sentence 57
24 months or less. Based on all the reasons we have set forth in
25 our supplemental submission, we are obviously asking for a top

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1 of the guidelines range and as we said earlier, the only thing
2 that has changed is that the defendant may have thought a month
3 ago in mid-October that he might have gotten a sentence of
4 time-served. Obviously the government has no idea what the
5 Court will determine to be the appropriate sentence today but
6 based on everything we have submitted, we certainly think there
7 is a very strong argument for a much, much higher sentence than
8 that and that is what is clearly driving this.

9 So, we would strongly oppose the defendant being
10 allowed to even file a motion to withdraw his plea.

11 THE COURT: Well, I think I need to determine whether
12 the defendant wishes to file a motion to withdraw his plea. I
13 will say, given the standard, the defendant should know that I
14 haven't heard anything in what you have offered that suggests
15 what would count as a fair and just reason for requesting the
16 withdrawal but a defendant does have a right to seek it. So, I
17 would certainly consider putting off the sentence to give you a
18 chance to withdraw it but I should also warn the defendant that
19 if he files a motion to withdraw the plea that there could be
20 an effect on the guidelines calculation because of the
21 acceptance of responsibility points. And if I decided to deny
22 the points for acceptance of responsibility the guideline
23 calculation would be higher. The low end of the range wouldn't
24 be 46 months, I think it would be higher.

25 Well, let me ask, first, does the defendant challenge

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1 the voluntariness of the plea? Was there something involuntary
2 about the plea?

3 (Defendant and counsel conferring)

4 MR. AMINI: Your Honor, he told me his plea was
5 voluntary for what he said. Anything more than that it was not
6 his plea. But for the items listed on the 21 list, just
7 provided in the list and that was for Red Cross and that was
8 his plea.

9 (defendant and counsel conferring)

10 MR. AMINI: And he would like to finish it today and
11 he wants to put himself at the mercy of the Court and get it
12 over with. That's what he also said.

13 THE COURT: Okay. Well, I mean, I will tell you the
14 guidelines calculation is what it is. I believe that he not
15 only did he have the plea agreement which clearly set forth the
16 government's view of the guideline calculation which I think is
17 the correct guidelines calculation and which is the starting
18 point for sentencing, as I said, I also went through at the
19 plea allocution several times and said were there any other
20 agreements you had other than this plea agreement? He said no.
21 I asked him do you understand that I'm the one who will decide
22 on your sentence? He understood. And several other questions
23 in the plea allocution to make sure it is voluntary. So, I
24 believe it would be difficult to show that it was not
25 voluntary. In my view what he admitted to counted as

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1 satisfying the elements of the conspiracy offense even though
2 the transaction didn't go through and there were no parts sent,
3 etc. I don't think that is required to meet the elements of
4 the crime.

5 Now, if you need a few minutes to talk with your
6 client I will give you five minutes if you would like or
7 whatever you want, to talk with your client about whether you
8 would like to make an actual motion to withdraw the plea.
9 Would you like a few minutes?

10 MR. AMINI: Yes, your Honor. That way I cover myself.

11 MR. HALPERIN: Your Honor, if I can quickly put
12 something on the record?

13 THE COURT: Yes.

14 MR. HALPERIN: Because the Court brought up an issue
15 that frankly I had not thought of, but if the Court denies a
16 possible motion to withdraw the plea and then finds that the
17 defendant should not get three points of acceptance of
18 responsibility, the government wants to put on the record that
19 the offense level would then be 26 with a guideline range of 63
20 to 78 months, so considerably higher than the 46 to 57 months
21 that it currently is. So, I think the defendant may want to
22 know that while he is talking to his attorney.

23 THE COURT: Did you understand that?

24 MR. AMINI: Yes. He knows about the guideline too,
25 your Honor, but the defendant also has a chance to prevail at

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1 trial based on all the documentation we have so we have an
2 entrapment defense in this case and we hope individual no. 1
3 comes and testifies, the FBI agent. They have been on his tail
4 for 10 months. I believe for him to get convicted at that
5 range he has to get convicted before the jury. But if your
6 Honor would give me five minutes I will talk to him. But
7 before that, your Honor, it has not been fair for my client
8 because he has no one here for him to testify at his trial. He
9 has not his father, not his wife. He doesn't have individual
10 no. 1 to come and testify what happened between them.

11 In the sentencing here for downward departure actually
12 it is important for the family members to come and see and, as
13 the PSR has said, there is downward departure warranted in this
14 case.

15 MR. HALPERIN: Your Honor, I want to respond because I
16 think this Court has been incredibly fair in terms of the
17 process and procedures it has allowed the defendant so I just
18 feel like it is important to respond on the record. To claim
19 that somehow it has not been fair, the Court very clearly and
20 carefully allocuted Mr. Tamimi at his plea hearing that he
21 would be giving up valuable constitutional rights by pleading
22 guilty instead of exercising his constitutional right to go to
23 trial including the right to call witnesses on his own behalf,
24 the right to confront and cross-examine witnesses, the right to
25 subpoena witnesses. All of those things this Court allocuted

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1 him on extremely clearly.

2 So, the government strongly objects to any notion that
3 these proceedings have not been fair. They have been entirely
4 fair. This Court has been very generous in terms of allowing
5 Mr. Tamimi to file any submissions he wanted before sentencing
6 and we just wanted to make that point clearly on the record,
7 your Honor.

8 THE COURT: Okay.

9 MR. AMINI: Your Honor, I may have misspoken. I did
10 not say this specific Court had done anything wrong. No,
11 that's not true, actually. I did not mention that. This Court
12 has been really generous, has been really nice, and I'm not
13 saying that to get leniency for my client, I am being honest on
14 that. What I said was in the sentencing usually family members
15 come and they testify. That's not at trial, for the sentencing
16 is a different phase. We don't have an opportunity as really
17 is not the fault of the Court, it is our fault being 6,000
18 miles away and they don't have a visa. I cannot bring the sick
19 wife and the sick father to come and testify and plead to the
20 Court. This Court doesn't have that picture in the mind how
21 the wife and how the father feels when the person who is
22 provided to them is in the prison in the United States. That
23 is what I meant to say. It is just circumstances we are in and
24 he is alone and he only has me in Washington, D.C.

25 That is all I was trying to say, nothing to do with

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1 the Court. The Court has been more than generous with us, your
2 Honor.

3 THE COURT: I understand. Thank you.

4 MR. AMINI: And the defendant knows that.

5 THE COURT: Okay. Why don't we take a few minutes and
6 discuss and I will come back and -- you would like to take a
7 few minutes?

8 MR. AMINI: I would appreciate it if you can give me
9 five minutes, if you can.

10 (Recess)

11 THE DEPUTY CLERK: Swear the second interpreter,
12 please?

13 THE COURT: Yes.

14 (interpreter sworn)

15 THE COURT: Mr. Amini, did you get a chance to
16 discuss?

17 MR. AMINI: Yes, your Honor. Mr. Tamimi himself wants
18 to address the Court on the issue and that will probably be the
19 best if you will allow it, your Honor.

20 THE COURT: Yes. He may.

21 THE DEFENDANT: Your Honor, I thank you for the
22 opportunity that you gave me. I have asked my attorney,
23 considering all the trouble I have created for the Court and --

24 INTERPRETER: I'm sorry.

25 I have asked my attorney to consider the expenses that

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1 I have incurred for the United States government and the Court
2 so far. I have asked him not to file a motion and that my
3 sentencing to be completed today. And I sincerely want to
4 express my regret. I really regret, considering the expenses I
5 have incurred for the United States government, I apologize to
6 the United States Attorney who is present here and also the
7 Honorable Court, especially your Honor and considering my own
8 health factors that I had a heart attack, I was in coma for 10
9 days and also my family members are ill; my wife, my father,
10 please and I have an 11-year-old daughter who has been waiting
11 me for 14 months now. I ask you, please, pay attention to
12 the -- consider the PSR report so that I can go back to my
13 family and I thank you for the opportunity you have given me.

14 THE COURT: Thank you.

15 Is there anything further, Mr. Amini?

16 MR. AMINI: Yes, your Honor.

17 In the information provided in the PSR it has the
18 family background and all the information in it are correct and
19 there is a recommendation which defendant would like the Court
20 to adopt, if it is possible, and based on the other cases of
21 similar kind we have provided to the Court, we believe the
22 recommendation of the PSR is warranted. We just hope by
23 sending Mr. Tamimi back home the whole society will benefit
24 from it and the government won't spend too much time keeping
25 him in prison in the United States while his family, borrowing

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1 money and living in Iran.

2 Just one thing, your Honor. When he came to the
3 United States he had \$4,000 with him and he actually sold his
4 car -- and this is honestly a true story, I talked to his
5 wife -- he sold his car in order to get the money to come to
6 the United States. He told this to the FBI agent, his wife
7 independently confirmed that to me. He was unemployed for one
8 year before coming to the United States and it just is at the
9 mercy of the Court and just we hope Court follows all the cases
10 they are convicted up, IEPA for many other charges for many
11 people including Dr. Amin Nazmi, he got only 40 months. He was
12 convicted by the jury for an IEEPA violation, conspiracy and
13 actually tax evasion, a list of items, eight or nine. He was
14 convicted and the Court gave him 40 months. And there are lots
15 of other cases we listed and the government also listed and we
16 just hope the recommendation of the PSR and the probation
17 office can be adopted by the Court, your Honor.

18 THE COURT: Okay.

19 MR. AMINI: Thank you, your Honor.

20 THE COURT: Thank you.

21 So, I think we will proceed to sentencing in this
22 case. I really essentially began the sentencing process last
23 time and went through the guideline calculation, we will
24 briefly review what I went over last time in anticipation of
25 sentencing.

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1 I will start by, just for the record, noting the
2 materials I have reviewed for today: The presentence report
3 and addendum and sentencing recommendation by probation, the
4 initial submission by defense counsel which was on September
5 29th, submission by the government dated October 18th, then the
6 defendant's submission dated October 23rd, the government's
7 sur-reply dated October 24th, government submission with
8 attachments dated November 7th, defendant's submission with
9 attachments dated November 12th, and then the government's
10 letter dated November 14th.

11 Mr. Amini, you have read the presentence report and
12 discussed it with your client?

13 MR. AMINI: Yes, your Honor.

14 THE COURT: And Mr. Tamimi, I believe you said you
15 have read the presentence report and discussed it with your
16 lawyer?

17 (Defendant and counsel conferring)

18 THE DEFENDANT: Yes.

19 THE COURT: And Mr. Halperin, you have reviewed the
20 presentence report?

21 MR. HALPERIN: We have, your Honor.

22 THE COURT: I think we covered this but there are no
23 objections to the presentence report; is that right?

24 MR. HALPERIN: No, your Honor.

25 MR. AMINI: My objection was for the level 26 and 23

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1 at the time which the Court denied my motion, so.

2 THE COURT: Okay.

3 As I said previously, I adopt the facts set forth in
4 the presentence report as my findings of fact and I'm going to
5 briefly review the guideline calculation which I reviewed at
6 the last hearing we had. The base offense level is 26 under
7 2M5.1 and for the reasons I explained previously the base
8 offense level 26 applies.

9 Pursuant to the plea agreement, the defendant is given
10 a three-level reduction for acceptance of responsibility in
11 light of his guilty plea which he has confirmed today. He is
12 not moving to withdraw. The total offense level therefore is
13 23. His Criminal History Category is I because of no prior
14 offenses and therefore the guideline range is 46 to 57 months.

15 This is the point where I normally give counsel an
16 opportunity to speak on behalf of the parties. We have
17 discussed quite a bit already, but if Mr. Amini there is
18 anything you would like to add before imposition of sentence,
19 you may. I have reviewed all of the materials that you have
20 submitted.

21 MR. AMINI: Your Honor, I don't want to take too much
22 of the Court's time anymore. I just want to request leniency
23 in this case because of many circumstances with the family. He
24 is far from his family, nobody can visit him, and he has no
25 medical problem himself. He pulled one of his teeth. He is

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1 pulling the other one, he has an infection, and I hope the
2 Court will see some of the extra evidence we have for
3 sentencing purposes.

4 THE COURT: Okay.

5 Mr. Tamimi, you have already addressed the Court but
6 is there anything else you would like to add today? You are
7 not required to say anything else.

8 THE DEFENDANT: I just want to express my regret and I
9 sincerely apologize to the Court. And I want to thank my
10 attorney for all the hard work he did and I really, sincerely,
11 apologize to the United States Government.

12 THE COURT: Thank you.

13 Mr. Halperin, is there anything you would like to say
14 on behalf of the government?

15 MR. HALPERIN: Very briefly, your Honor.

16 Since we have submitted a number of submissions
17 already and we have already gone through all the other 3553(a)
18 factors in a previous submission I'm not going to reiterate
19 again but I want to remind the Court because of the nature and
20 circumstance of the offense, Mr. Tamimi's history and
21 characteristics, his role in the offense and the need for
22 deterrence, we had previously argued that those all counsel
23 strongly for a guideline range sentence.

24 As the Court knows, we were adjourned three weeks
25 because the Court wanted additional materials about really two

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1 questions: Number one, which entity was Mr. Tamimi seeking the
2 materials for, was it the military or the Iranian Red Crescent.
3 I think the document made clear by a preponderance of the
4 evidence that it was for the military; and number two, and in a
5 way as significantly, whether or not Mr. Tamimi had lied to the
6 Court. And because we think there is substantial evidence that
7 he lied to the Court both at the pre-sentencing hearing in
8 October and at the plea colloquy in July, the government has
9 taken the unusual step of asking our supervisors for permission
10 to seek the top of the range in this case and, as the Court
11 knows, we are seeking the top of the range. We think 57 months
12 is appropriate for all the reasons we have set previously about
13 the seriousness of the offense but also because the fact that
14 the defendant has lied to this Court is something that we
15 strongly believe should be considered by this Court in
16 determining the appropriate sentence.

17 Thank you.

18 THE COURT: Let me ask you, it seems like the contact
19 for which he was making arrangements to obtain the spare parts
20 was with an entity called Panha, P-A-N-H-A, which is kind of
21 the helicopter repair entity in Iran and does things both for
22 the military and not for the military. So, at the end of the
23 day, I don't know that the defendant was specifically -- had
24 the specific intent to aid the military or any other
25 organization. Isn't it possible that he was just a business

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1 person essentially obtaining the spare parts for an entity
2 which I think is in violation of the law and I think certainly
3 reflected a risk that it would go to the military? But is
4 there any evidence that he truly specifically was getting these
5 things for the military as opposed to for Panha?

6 MR. HALPERIN: I think there is, your Honor. I think
7 the fact that the defendant himself -- and of course the
8 standard here is preponderance of the evidence, obviously not
9 beyond a reasonable doubt -- but the fact that the defendant
10 himself in phone calls with individual 1 on November 19
11 referenced the jet fighters, that this was for jet fighters, is
12 critical.

13 THE COURT: But the way -- it is funny. When you read
14 the whole transcript it is almost as though he was referencing
15 the jet fighters in a hypothetical way. It is not clear that
16 those were the spare parts they were talking about in this
17 agreement. Maybe I am misreading it. It is very hard to
18 understand what they were saying but it sounded like it was
19 possibly hypothetical.

20 MR. HALPERIN: I think the other thing, your Honor, is
21 when in the March 7 call when Mr. Tamimi notes that he told a
22 Mr. Han, *frankly, sir, this is military*, and they're laughing.
23 Those are other things that I think are important in terms of
24 the Court's consideration.

25 And Ms. Surratt reminds me, of course, that Tamimi

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sentence

1 acknowledged that Panha is connected to Iran's Air Force as
2 well.

3 So, I certainly agree with the Court that there is a
4 level of connecting the dots but I think based on Mr. Tamimi's
5 own statements in these calls that were recorded it is clear --
6 maybe not beyond a reasonable doubt but certainly by a
7 preponderance of the evidence, that he was trying to acquire
8 these things for the military.

9 Secondly, what is overwhelmingly clear beyond a shadow
10 of a doubt is that he was not trying to get these for the Red
11 Crescent, in other words that he never mentioned, at all,
12 during the course of the investigation or in its post-arrest
13 statements this was for the Red Crescent and that helps prove
14 the government's point, I would submit, respectfully, as well,
15 that it wasn't until the plea and then at the conference in
16 October that he first mentions the Red Crescent. He doesn't
17 mention it at all. So, I think the lack of discussion about
18 Red Crescent helps prove the government's point as well.

19 THE COURT: Okay. Is there anything further?

20 MR. AMINI: Yes, your Honor.

21 I attached -- actually Exhibit 3 is in Farsi, I don't
22 know if I can ask the translator to read a couple of things.
23 It was as I mentioned in the submission, it is a helicopter who
24 belonged to the Red Crescent. It went down on November 2nd of
25 2011 and actually it says: *It is usable but the engine and the*

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1 *body need to be repaired.* Those are in Farsi, I got them from
2 website.

3 THE COURT: No, I know about the evidence that the Red
4 Crescent uses these helicopters, although I have to say the
5 article that is Exhibit 4 that talks about the helicopter
6 crash, the Red Crescent, did you see the second to last
7 sentence of that article talking about the Red Crescent
8 helicopter actually says the helicopter belonged to the Air
9 Force and was on lease to emergency services. That struck me
10 as undermining the argument that even if it was Red Crescent
11 that that was somehow inconsistent with it fundamentally for
12 the military.

13 MR. AMINI: Your Honor, Exhibit 4, that is a different
14 crash than Exhibit 3, it is actually 2011, November 2nd.
15 Exhibit 2 actually has a picture of -- it is not crashed to the
16 ground, it actually, they land in the water in the river.

17 THE COURT: Okay.

18 MR. AMINI: And the body has a problem. And my
19 understanding is, your Honor, the Iranian Red Cross, they own
20 about 19 helicopters but when there is an emergency they even
21 borrow from Turkey. There is one of the actually -- I'm sorry,
22 it comes to Iran and actually crashes and it I have that one in
23 Exhibit 2.

24 So when there is an emergency they actually borrow
25 from other entities and they have borrowed from Turkey and

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1 other surrounding countries to come and help in the big
2 emergencies.

3 THE COURT: Okay.

4 MR. AMINI: So that is not unusual, your Honor. They
5 have 19 for all purposes but then there is an earthquake or
6 something and the big emergencies then they do borrow.

7 THE COURT: Okay. Thank you.

8 Is there any reason why sentence may not be imposed at
9 this point?

10 MR. HALPERIN: No, your Honor.

11 THE COURT: Mr. Amini?

12 MR. AMINI: No, your Honor.

13 THE COURT: In preparing to sentence the defendant I
14 have considered the presentence report, the recommendation of
15 probation, the written and oral statements of defense counsel
16 and the defendant and the government as well as everything
17 submitted on behalf of the defendant. I have considered each
18 of the factors set forth in 18 U.S.C. 3553(a) which include the
19 nature and circumstances of the offense, the defendant's
20 history and characteristics, the need for the sentence to
21 reflect the seriousness of the offense, to promote respect for
22 the law and to provide just punishment for the offense, also to
23 afford adequate deterrence to criminal conduct.

24 I have considered also the sentencing guidelines
25 provisions and policy statements, the need to avoid unwarranted

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1 sentencing disparities.

2 Starting, finally, the Court is to impose a sentence
3 that is sufficient but not greater than necessary to comply
4 with all the sentencing purposes all of which I have
5 considered.

6 Starting with the nature and circumstances of the
7 offense this is a serious offense. It is a crime that
8 implicates the national security of the United States. It is
9 evident to me that Mr. Tamimi knowingly entered into an
10 agreement to violate the statute IEPA by agreeing for the
11 trans-shipment of helicopter parts into Iran and he did so
12 knowing that such shipment was in violation of the United
13 States law.

14 The defendant argues a couple of things; one, that the
15 shipment was only for minor spare parts such as bolts and
16 screws; and second that he believed the parts were for
17 helicopters to be used by the Red Crescent organization.

18 First, the fact that the agreement was only for minor
19 parts does not diminish the seriousness of the offense or his
20 culpability. Parts are parts and minor parts, such as ball
21 bearings are, just as essential as other parts and are equally
22 in violation of the law.

23 The defendant's recent statements he thought the
24 helicopters would be used for the Red Crescent are not
25 supported by the facts. He did not raise this issue in any of

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sentence

1 his conversations at the time with the co-conspirator or
2 cooperator, nor did he raise it with the government agents
3 after his arrest.

4 I think it is significant that he actually did refer
5 to the parts as military parts in recorded conversations
6 arranging for the transaction and he indicated that the end
7 user could not leave Iran which suggests that it was probably
8 not the Red Crescent.

9 In any event, that doesn't change the ultimate
10 culpability or guilt for the crime. I will say, as I mentioned
11 in my questions to Mr. Halperin, it is likely that the parts
12 were intended for Panha, P-A-N-H-A, the helicopter repair
13 company in Iran which services both military and non-military
14 helicopters. It is not clear that he specifically intended
15 that these parts be used by the military. It is possible that
16 he did not care but was involved in the transaction primarily
17 as a business person. That seems likely to me. But that
18 ultimately -- that ultimately did not matter for his
19 culpability. He knowingly committed the crime and at the very
20 least he recklessly disregarded a high risk that the parts
21 could and would be used for a military purpose, and I believe
22 that brings the crime within essentially the heartland of where
23 the guidelines set the range for this offense as properly
24 calculated.

25 I also need to consider the history and

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1 characteristics of the defendant. I believe the defendant
2 willingly engaged in this conduct that was illegal, although he
3 suggests he was lured into it by the "co-conspirator." There
4 is no basis for concluding that he was not a willing
5 participant or that he would not have considered this conduct
6 absent the other individual's involvement.

7 Also, I will note that he is apparently a man who has
8 been a good family man. I believe in other ways he is probably
9 a good person, he has provided for his family. He cares about
10 his family very much. His wife and his father have significant
11 health problems but those sorts of family problems are faced by
12 many defendants who commit crimes and they do not reduce the
13 defendant's culpability or the need for an appropriate
14 punishment.

15 In the end, I believe that Mr. Tamimi was a business
16 person who was willing to take a very serious risk to make
17 money in this situation.

18 I also need to consider the seriousness of the offense
19 and just punishment and these call for a significant sentence
20 that is consistent with the guidelines. In terms of
21 deterrence, I need to consider the need for both general
22 deterrence and specific deterrence, the need to prevent this
23 defendant from engaging in such activity in the future. I
24 doubt that he will engage in this activity again. If he does,
25 I certainly don't think he will come back to the United States

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1 for fear of getting caught. In terms of general deterrence,
2 though, it is also important for others to know that this is a
3 serious offense that will be taken seriously.

4 For all of these reasons I intend to sentence the
5 defendant to a guideline sentence of 46 months' incarceration.
6 I'm not going to impose supervised release because under 5D1.1
7 his deportation is inevitable. I'm not going to impose a fine
8 but there is a \$100 special assessment which is mandatory.

9 Does defense counsel have any legal objection to the
10 steps or know any legal reason why it may not be imposed?

11 MR. AMINI: Your Honor, based on the cases of the
12 similar kind, 48 months is not along the line of the other
13 cases.

14 THE COURT: 46.

15 MR. AMINI: I'm sorry, 46. We have, again, Dr. Ahtar
16 even with 32 charges against him and pleading guilty for the
17 same IEPA violation he got just probation and he was let go to
18 Iran.

19 I mentioned Dr. Amir Nazmi -- he was convicted --
20 convicted of IEPA plus eight other charges in a jury trial; he
21 got only 40 months.

22 In this case defendant really just gave the list of
23 the items, not even seeing it. I believe 46 months is just too
24 much, is not considering any of these downward departures
25 mentioned in the PSR report, your Honor. I believe that is

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sentence

1 just too long for what has been done in this case.

2 MR. HALPERIN: Judge, that's obviously not a legal
3 reason why the sentence can't be imposed. There is no legal
4 reason why this guideline range sentence cannot be imposed.

5 THE COURT: Okay. Mr. Tamimi, please stand.

6 It is the judgment of this Court that you be committed
7 to the custody of the Bureau of Prisons for a period of 46
8 months. There will be no fine because I find that you are not
9 in a position to pay a fine except for the mandatory \$100
10 special assessment.

11 You have a right to appeal your conviction and
12 sentence except to whatever extent you have validly waived that
13 right as part of your plea agreement. If you are unable to pay
14 the costs of appeal, you may apply for leave to appeal in forma
15 pauperis. Any appeal must be filed within 14 days of the
16 filing of the judgment of conviction.

17 I direct that a complete copy of the PSR be provided
18 to the Bureau of Prisons and the Sentencing Commission and that
19 counsel on any appeal have access to the report.

20 The clerk will prepare the judgment and see to it that
21 the required documentation is sent to the sentencing
22 commission.

23 Does the government move to dismiss the underlying --
24 I think there was a second count.

25 MR. HALPERIN: We do, your Honor.

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1 THE COURT: That count is dismissed.

2 And is there a relevant forfeiture in this case or
3 not?

4 MR. HALPERIN: No forfeiture, your Honor.

5 THE COURT: Is there anything further?

6 MR. HALPERIN: Nothing further, your Honor.

7 THE COURT: Anything further?

8 MR. AMINI: Your Honor, can he be sent to Fort Dix in
9 New Jersey, I believe? It is a minimum security prison with
10 the medical facility so he will be at least seen for the heart
11 attack.

12 THE COURT: Is he getting medical treatment now?

13 MR. AMINI: Yes, your Honor, but sometimes the
14 medication comes late.

15 THE COURT: I'm not familiar with what level Fort Dix
16 is. Does the government know anything about that?

17 MR. HALPERIN: Your Honor, I don't know offhand what
18 level Fort Dix is but I think the Court knows the Court can
19 make a recommendation. BOP will make its own determination as
20 to what level of security prison Mr. Tamimi should be in and
21 obviously almost any, I think BOP facility will have medical
22 facilities to handle what is relatively routine. I'm not
23 minimizing the severity of the illness but this is not an
24 unusual type of illness. So, I think the BOP is well equipped
25 to handle anything like that.

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1 THE COURT: I can make a recommendation.

2 MR. AMINI: Yes, your Honor. That's what we ask.

3 THE COURT: Is it because of the northeastern region
4 that he wants or more a specific --

5 MR. AMINI: He has no one in the United States. At
6 least he would be close to me so I can probably visit him.

7 THE COURT: Closer to what?

8 MR. AMINI: He would be close my office so I can visit
9 him maybe every six months or so, make sure he is doing okay.

10 THE COURT: You are in Washington, aren't you?

11 MR. AMINI: Yes, your Honor.

12 THE COURT: So you suggested Fort Dix.

13 MR. AMINI: He mentioned to me he heard from the other
14 prisoners Fort Dix for his condition is a better place.

15 THE COURT: Okay. I'm happy to recommend that,
16 assuming it is appropriate to the Bureau of Prisons and, again,
17 sometimes it works and sometimes it doesn't.

18 MR. AMINI: Yes, your Honor.

19 THE COURT: Is there anything further?

20 MR. AMINI: No, your Honor. Thank you.

21 MR. HALPERIN: Not from the government.

22 THE COURT: Thank you.

23 MR. HALPERIN: Thank you, your Honor.

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